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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff, v. BRAGLIA MARKETING GROUP, LLC, a Nevada limited liability company, FRANK BRAGLIA, individually and as an owner and manager of Braglia Marketing Group, LLC, and KATE BRAGLIA, individually and as an owner and manager of Braglia Marketing Group, LLC, Defendants.	CV-S-04-1209-DWH-PAL **COMPLAINT FOR CIVIL PENALTIES, PERMANENT INJUNCTION, AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("FTC" or "Commission"), pursuant to Section 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 56(a)(1), for its complaint alleges:

1. Plaintiff brings this action under Sections 5(a), 5(m)(1)(A), 13(b), 16(a) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b), 56(a) and 57b, and Section 6 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (the "Telemarketing

Act"), 15 U.S.C. § 6105, to obtain monetary civil penalties, a permanent injunction, and

2. other equitable relief for defendants' violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and the FTC's Telemarketing Sales Rule (the "TSR" or "Rule"), 16 C.F.R. Part 310, as amended by 68 Fed. Reg. 4580, 4669 (January 29, 2003).

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355, and 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a) and 57b. This action arises under 15 U.S.C. § 45(a).

4. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1395(a), and 15 U.S.C. § 53(b).

DEFENDANTS

5. Defendant Braglia Marketing Group, LLC ("BMG") is a Nevada limited liability company with its principal place of business at 4495 W. Hacienda Ave., Las Vegas, Nevada 89118. BMG is a telemarketer that initiates outbound telephone calls to induce consumers to purchase goods or services from sellers, including but not limited to the Atlantic City, New Jersey timeshare resort properties of Flagship Resort Development Corporation and Atlantic Palace Development, LLC. BMG transacts or has transacted business in this District.

6. Defendant Frank Braglia is a fifty-percent owner and one of the two managers of BMG. He is the spouse of defendant Kate Braglia. In connection with the matters alleged herein, he resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, or participated in the acts and practices of BMG, including the acts and practices set forth in this complaint.

7. Defendant Kate Braglia is the other fifty-percent owner of and the other manager of

BMG. She is the spouse of defendant Frank Braglia. In connection with the matters alleged herein, she resides or has transacted business in this District. At all times material to this complaint, acting alone or in concert with others, she has formulated, directed, controlled, or participated in the acts and practices of BMG, including the acts and practices set forth in this complaint.

THE TELEMARKETING SALES RULE AND THE NATIONAL DO NOT CALL REGISTRY

8. In 1994, Congress directed the FTC to prescribe rules prohibiting abusive and deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15 U.S.C. §§ 6101-6108. On August 16, 1995, the FTC adopted the Telemarketing Sales Rule

9. (the "Original TSR"), 16 C.F.R. Part 310, which became effective on December 31, 1995. On January 29, 2003, the FTC amended the TSR by issuing a final amended TSR and a Statement of Basis and Purpose (the "Amended TSR"). 68 Fed. Reg. 4580, 4669.

10. Among other things, the Amended TSR established a "do-not-call" registry, maintained by the Commission (the "National Do Not Call Registry" or "Registry"), of consumers who do not wish to receive certain types of telemarketing calls. Consumers register their telephone numbers on the Registry without charge either through a toll-free telephone call or over the Internet at *donotcall.gov*.

11. Sellers, telemarketers, and other permitted organizations can access the Registry over the Internet at *telemarketing.donotcall.gov* to download the registered numbers, after paying the appropriate annual fee as set forth in 16 C.F.R. § 310.8(c).

12. It is a violation of the Amended TSR for sellers and telemarketers subject to the FTC's jurisdiction to call numbers on the Registry. 16 C.F.R. § 310.4(b)(1)(iii)(B). In addition, sellers and telemarketers are prohibited from abandoning any outbound telephone call by not connecting the call to a representative within two (2) seconds of the consumer's

completed greeting. 16 C.F.R. § 310.4(b)(1)(iv). Finally, sellers and telemarketers are also prohibited from calling any telephone number within a given area code, unless the seller has first paid the annual fee for access to the telephone numbers, within that area code, that are included in the Registry. 16 C.F.R. § 310.8(a) and (b).

13. Consumers who receive telemarketing calls to their registered numbers can complain of Registry violations the same way they registered, through a toll-free telephone call or over the Internet at *donotcall.gov*, or by otherwise contacting law enforcement authorities.

14. On or after September 2, 2003, the FTC opened access for sellers and telemarketers to begin registering, paying the fee(s) for, and accessing the Registry.

15. On or after October 1, 2003, the FTC began enforcement of the Amended TSR's prohibition against sellers and telemarketers abandoning outbound calls to consumers.

16. On or after October 17, 2003, the FTC began enforcement of the National Do Not Call Registry against sellers and telemarketers.

17. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the TSR constitutes an unfair or deceptive act or practice in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

DEFENDANTS' BUSINESS ACTIVITIES

18. BMG is a "telemarketer" engaged in "telemarketing," as defined by the Amended TSR, 16 C.F.R. § 310.2.

19. On or after October 17, 2003, in connection with telemarketing, BMG has placed, or caused others to place, more than 300,000 calls to consumers' telephone numbers that are on the National Do Not Call Registry.

20. On or after October 17, 2003, in connection with telemarketing, BMG has placed, or

caused others to place, more than 10,000 calls to telephone numbers in various area codes without the seller on whose behalf BMG was calling first paying the annual fee for access to the telephone numbers, within that area code, that are on the National Do Not Call Registry.

21. On or after October 1, 2003, in connection with telemarketing, BMG has abandoned, or caused others to abandon, outbound telephone calls to consumers by failing to connect the call to a representative within two (2) seconds of the consumer's completed greeting.

22. At all times relevant to this complaint, BMG has maintained a substantial course of trade or business in the offering for sale and sale of goods or services via the telephone, in or affecting commerce, as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

VIOLATIONS OF THE TELEMARKETING SALES RULE

Count I

(Violating the National Do Not Call Registry)

23. In numerous instances, in connection with telemarketing, defendants have initiated, or caused others to initiate, an outbound telephone call to a person's telephone number on the National Do Not Call Registry in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B).

Count II

(Abandoning Calls)

24. In numerous instances, in connection with telemarketing, defendants have abandoned, or caused others to abandon, an outbound telephone call by failing to connect the call to a sales representative within two (2) seconds of the completed greeting of the person answering the call, in violation of the TSR, 16 C.F.R. § 310.4(b)(1)(iv) and § 310.4(b)(4).

Count III

(Failing to Pay the Fee to Access the National Do Not Call Registry)

25. In numerous instances, in connection with telemarketing, defendants have initiated, or caused others to initiate, an outbound telephone call to a telephone number within a given area code without defendants' seller first paying the required annual fee for access to the telephone numbers, within that area code, that are on the National Do Not Call Registry, in violation of the TSR, 16 C.F.R. § 310.8.

CONSUMER INJURY

26. Consumers in the United States have suffered and will suffer injury as a result of defendants' violations of the TSR. Absent injunctive relief by this Court, defendants are likely to continue to injure consumers and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

27. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other ancillary relief to prevent and remedy any violation of any provision of law enforced by the FTC.

28. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, and as implemented by 16 C.F.R. § 1.98(d) (1997), authorizes this Court to award monetary civil penalties of not more than $11,000 for each violation of the TSR. Defendants' violations of the TSR were committed with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

29. This Court, in the exercise of its equitable jurisdiction, may award ancillary relief to remedy injury caused by defendants' violations of the Rule and the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff requests that this Court, as authorized by Sections 5(a), 5(m)(1)(A), 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 53(b) and 57b, and pursuant to its own equitable powers:

1. Enter judgment against defendants and in favor of plaintiff for each violation alleged in this complaint;
2. Award plaintiff monetary civil penalties from defendants for every violation of the TSR;
3. Permanently enjoin defendants from violating the TSR and the FTC Act;
4. Order defendants to pay the costs of this action; and
5. Award plaintiff such other and additional relief as the Court may determine to be just and proper.

Dated: August 30, 2004

Respectfully submitted,

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